THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 201 of 1999
With
CRIMINAL APPEAL No. 187 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RA-MCHANDRA SINGHASAN YADAV & 3 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MRS SHILPA R SHAH for Appellant(s) : 1 – 4 in both appeals
MS MS PANCHAL, APP for Opponent(s) : 1 in both appeals

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/10/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. Criminal Appeal No. 201 of 1999 has been filed by the appellant Nos.1, 2, 3-original accused Nos.1 to 3 viz. Ramchandra Singasan Yadav, Chandrashekhar and P.K.Balam respectively of Sessions Case No.247 of 1997 and the appellant No.4-original accused-Chandrabhusan of Sessions Case No.118 of 1998 through their learned counsel while Criminal Appeal No.187 of 1999 has been preferred prior in point of time by the very appellant No.3-P.K.Balam of Criminal Appeal No.201 of 1999 through jail authorities.

2. All the aforesaid four accused were charged and tried for the offences punishable under Section 302 read with Section 34 of Indian Penal Code as well as under Section 135 of Bombay Police Act and at the end of trial, all of them were convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs.3,000/-, in default, to suffer simple imprisonment for 2 months for the offence under Secs.302 read with Sec. 34 of IPC and for the offence under Sec.135 of Bombay Police Act, they were convicted and sentenced to suffer imprisonment for six months and to pay fine of Rs.100/-, vide common judgment and order dated 30-12-1998 delivered by the learned Addl. Sessions Judge, City Civil & Sessions Court No.18,

Ahmedabad, in Sessions Case Nos.247 of 1997 and 118 of 1998.

3. The case of the prosecution in short is that a complaint was filed by one Sushilkumar, a rickshaw driver residing in Gujarat Housing Board. It was inter alia alleged that he had gone to see his friend Shatish Maharaj at Bapunagar Sanjaynagar Roofs, Opp. Jyogimata's temple. At that time, cousin of Shatish Maharaj, Gulshan and friend Raja were also there. On 26-6-1997 at about 1700 hours, when they were chit-chatting, all the four accused viz, Munno, Masanio, P.K.Balam and Ramchandra rushed towards them with weapons like iron pipe, gupti, Rampuri knife and sword and started assaulting Shatish Maharaj Singh causing him grievous injuries on various parts of his body. When they raised alarm, all the accused ran away from the scene of incident leaving pipe, knife and broken handle portion of sword at the place of incident and escaped with gupti and remaining broken piece of sword i.e. blade. The victim was then taken to Shardaben Hospital in the rickshaw of one Anup Singh where on examination, the doctor declared the victim dead. The said complaint was registered as Bapunagar Police Station I.C.R.No.172 of 1997 for the offence punishable under Sec.302 read with Sec.34 of IPC and also under Sec.135 of

B.P.Act. The Police started investigation, recorded statements of witnesses, drew inquest panchnama in presence of panchas and also made arrangements for sending the dead body of the deceased for post mortem. He also prepared panchnama of scene of offence, seized muddamal found at the place of incident by drawing panchnama to that effect in presence of panchas and sent the same to FSL for analysis. During the course of investigation, as accused Ramchandra Singhasan Yadav, Chandrasekhar and P.K.Balam surrendered themselves before the Bapunagar Police Station on 27-6-1997, they were arrested. Since accused No.1-Ramchandra Singhasan Yadav expressed willingness to show part of the sword i.e. blade taken by him after the incident, same was seized by the investigating agency and attached under a panchnama drawn in presence of panchas. Same was also sent to FSL for analysis. On receipt of post mortem and FSL reports, same were kept with the investigation papers. Since one of the accused-Chandrabhusan @ Masaniyo Singhasan Yadav was absconding, charge sheet was submitted qua other three accused persons in the Court of learned Metropolitan Magistrate, Ahmedabad.

4. Thereafter, the absconding accused-Chandrabhusan also surrendered himself on 23-

12-1997 and he was also arrested after following all legal formalities. Since he also expressed willingness, gupti which was shown by him and which was used in the commission of offence was also seized in presence of panchas by drawing panchnama. A supplementary charge sheet was then submitted qua him in the learned Metropolitan Magistrate Court.

5. As the offence alleged against the accused was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate, Ahmedabad, committed both the cases to the Court of Sessions at Ahmedabad City where the case qua the appellant Nos.1,2 and 3 was numbered as Sessions Case No.247 of 1997 while the case qua appellant No.4 was numbered as Sessions Case No.118 of 1998 and transferred to the Court of learned Addl. Sessions Judge, Court No.18, Ahmedabad City, for deciding them on merits. The learned Judge framed charge against the accused. The accused pleaded not guilty to the said charge and claimed to be tried. Common evidence was led in both the cases.

6. To prove the guilt against the accused, the prosecution examined in all, 11 witnesses namely, P.W.1, Sushilkumar Bansilal Goswami at Ex.21; P.W.2, Arvindbhai Ambalal Patel at Ex.22; P.W.3, Bharatkumar Ganpatlal Mistry at

Ex.29; P.W.4, Rajubhai Kishanbhai Gajjar at Ex.31; P.W.5, Nikulkumar Kantilal Thakore at Ex.32; P.W.6, Girishkumar Chamanlal Thakore at Ex.34; P.W.7, Dr.Chandrakant Babalal Darji at Ex.36; P.W.8, Chandreshbhai Govindbhai Patel at Ex.38; P.W.9, Maganbhai Gagabhai Yadav at Ex.41; P.W.10, Sureshbhai Babubhai Patel at Ex.44 and P.W.11, Manilal Shivabhai Patel at Ex.46. The prosecution also relied on various documentary evidence namely, complaint Ex.59; report of crime Ex.46(A), panchnama of scene of offence Ex.27; inquest panchnama Ex.33, panchnama of clothes worn by the accused Ex.30; panchnama of clothes worn by the deceased Ex.35; post mortem report Ex.37; discovery panchnama Ex.40, panchnama of scooter allegedly used in the offence Ex.28; letter sent to FSL Ex.47; FSL receipt of muddamal Ex.48; forwarding letter from FSL Ex.49; FSL report Ex.50, serological report of FSL Ex.51; FSL Analyst opinion Ex.52; letter sent to FSL Ex.53; FSL receipt of muddamal Ex.54; forwarding letter from FSL Ex.55; FSL report Ex.56; discovery panchnama Ex.45 and arrest memo of accused Chandrabhushan Ex.57.

7. On submission of closing purshis by the prosecution, learned Addl. Sessions Judge recorded further statement of the accused under Sec.313 of the Code of Criminal

Procedure. Thereafter, learned Addl. Sessions Judge, Court No.18, Ahmedabad City, upon affording opportunity of hearing to the learned advocates appearing for the respective parties and on an appreciation of evidence, was of the view that the prosecution has successfully established the guilt against the accused for having committed the offence under Sec.302 read with Sec.34 of IPC as well as Sec.135 of B.P.Act and accordingly passed the impugned common judgment and order of conviction and sentence dated 30-12-1998 in Sessions Case Nos.247 of 1997 and 118 of 1998 against the appellants-accused as stated hereinabove.

8. Against the aforesaid judgment and order of conviction and sentence, Criminal Appeal No.187 of 1997 has been sent by the original accused No.3 of Sessions Case No.247 of 1997 through jail authorities. Subsequently, he along with original accused Nos.1 and 2 of Sessions Case No.247 of 1997 and original accused of Sessions Case No.118 of 1998 have preferred Criminal Appeal No.201 of 1999 through their learned counsel, Ms.Shilpa R.Shah.

9. As both the appeals arose out of the common judgment and order dated 30-12-1998 passed in Sessions Case Nos. No.247 of 1997 and 118 of 1998, they are heard together and are being

decided by this common judgment.

10. Heard learned counsel, Ms.Shilpa R.Shah for the appellants and learned APP, Ms.M.S.Panchal for the State, in both the appeals.

11. Ms.Shilpa R.Shah, learned counsel for the appellants, has mainly argued that case of the prosecution is based only on the oral evidence of two witnesses i.e. P.W.1, Sushilkumar Bansilal Goswami, Ex.21, who is the complainant and witness of incident and P.W.4, Rajubhai Kishanbhai Gajjar Ex.31, who, according to prosecution, also is a witness of incident.

12. It is further argued that the conduct of P.W.4, Rajubhai Kishanbhai Gajjar, does not inspire any confidence in view of the fact that he being the friend of the deceased as well as the witness of incident leaves the place immediately after occurrence of the incident. He, instead of helping the victim, went home leaving the deceased in such a precarious condition and did not dare to come out till evening when he knew about the death of Shatish.

13. It is further argued that though these two witnesses are claiming to be the alleged eye witnesses, their presence at the time of incident becomes doubtful. Since their presence has not been established by the

prosecution, they cannot be treated as eye witnesses and no credibility can be attached to their evidence for basing conviction. According to her, they can at the most be treated as chance witnesses or got up ones.

14. It is also argued that practically all the panchas are from one vicinity. They are friends and relatives of a social worker, who happens to be the nearest relative of the deceased and hence, their evidence also should not be believed.

15. Taking us through the vardhy and FIR, it is argued that as such vardhy disclosed detailed description of the cognizable offence and was not a cryptic one. However, the facts narrated in the FIR filed by the complainant do not give detailed description of the incident in question. It simply stated that all the assailants armed with weapons rushed at the scene of offence and assaulted the deceased (dhada-dhat). It is therefore submitted that the vardhy should have been treated as the FIR and not the complaint and the complaint instead should have been treated as the statement of the complainant.

16. It is lastly argued that except the evidence of the aforesaid two witnesses, there are no evidence of any other eye witnesses nor any other evidence connecting the accused with the crime in question. She has fairly

submitted that the incident is of gruesome nature wherein a young person has lost his life, but only on that ground, due to failure on the part of the prosecution to connect the accused with the crime in question, the accused cannot be convicted. It is requested that they may be given benefit of doubt and may be acquitted by quashing and setting aside the impugned common judgment and order.

17. Learned APP, Ms.M.S.Panchal, has taken us through the oral evidence of prosecution witnesses 1 and 4 along with other evidence as well as through the relevant paragraphs of the detailed judgment delivered by the court below. According to her, evidence of these two witnesses are trustworthy, reliable and free from doubt and nothing contrary has come out from their evidence. Since the prosecution has proved the case against the appellants beyond reasonable doubt, it is requested that the impugned common judgment and order of conviction and sentence may not be interfered with.

18. We have gone through the oral as well as the documentary evidence and relevant portion of the impugned judgment shown to us by the learned counsel for the respective parties.

19. It is established from the evidence on record that incident in question has taken place on 26-6-2007 at about 1700 hours. It is

also established from the evidence of P.W.1 and P.W.4 as well as from the FIR Ex.59 that on the date of incident, deceased was sitting near Jyogimata's temple, Bapunagar, in the city of Ahmedabad with P.W.1-Sushilkumar Bansilal Goswami, P.W.4-Rajubhai Kishanbhai Gajjar and one Gulshan and at that time, the present appellants armed with deadly weapons came rushing at the place of offence. Both these witnesses have categorically deposed that the appellant No.1 was armed with sword, the appellant No.2 with pipe, the appellant No.3 with knife and the appellant No.4 with gupti. They have further deposed that all of them abruptly assaulted the deceased with above referred deadly weapons causing grievous injuries on various parts of the body of the deceased including vital parts and ran away from the scene of offence leaving behind the weapons viz., pipe, knife and broken handle portion of sword at the place of incident but escaped with gupti and remaining part of sword i.e. blade. They have also deposed that on hearing the incident, people were also gathered. The complainant has tried to search for a rickshaw and he found the rickshaw of Anup Singh in which, he along with other persons took the victim to Shardaben Hospital where, on examination, the doctor has declared him

dead. As per the deposition of P.W.1-Sushilkumar Bansilal Goswami, he filed the complaint against all four accused and same has been noted down by I.O., 2nd P.I. of Bapunagar Police Station, P.W.11, Manilal Shivabhai Patel, Ex.46 in the hospital itself through his writer constable, Bhagvansinh Dahyabhai. Thereafter, he sent the complaint along with his report through Police Constable, Mr.Dharmendrasinh to PSO, Bapunagar Police Station for registering the offence and it has been registered as Bapunagar Police Station I.C.R.No.172 of 1997 for the offence punishable under Secs.302 read with Sec.34 of Indian Penal Code and Sec.135 of B.P.Act. The PSO sent back the FIR along with the report to P.I., Bapunagar Police Station, P.W.11, Mr.Manilal Patel for further investigation.

20.As per the evidence of P.W.11, Mr.Manilal Patel, on receipt of FIR and report, he filled up marnotar form and made arrangements to send the dead body of the deceased to Civil Hospital for post mortem alongwith Police Constable, Maganbhai Gagabhai. He has further deposed that thereafter he went to the scene of offence and prepared the panchnama of scene of offence Ex.27 as shown by one Gulshan Rajaram Rajput. It is also established from the above referred evidence

that he also seized handle portion of the sword, rampuri knife and iron pipe from the scene of offence and attached the same under panchnama in presence of panchas. It appears from the record that aforesaid muddamal seized by the investigating agency were sent to FSL for analysis. FSL expert vide report Ex.51 opined that rampuri knife bore human blood stains but it was not sufficient to ascertain the blood group. FSL expert also opined that the clothes of the deceased were also having human bloodstains of 'B' group. Similarly, blade of the sword was also having bloodstains but as opined by the FSL expert, it was not sufficient to decide the blood group.

21.It is also established from the evidence on record that I.O. has also recorded statements of various witnesses and also tried to search the accused. As per the evidence on record, three of the four accused namely, Ramchandra Singhasan Yadav, Chandrasekhar and P.K.Balam directly surrendered themselves before the Bapunagar Police Station on the next day of incident i.e. on 27-6-1997 and they were arrested. During the course of investigation on 28-6-1997, discovery of part of sword i.e. blade was seized by the investigating agency by way of discovery panchnama Ex.40 at the instance of accused No.1-Ramchandra Singhasan

Yadav from the place shown by him. The prosecution has proved the said panchnama through the evidence of P.W.8, Chandreshbhai Govindbhai Patel at Ex.38, who is the panch of discovery panchnama of part of sword.

22.Similarly when the accused-Chandrabhusan was surrendered on 23-12-1997, he was also arrested on completion of procedural formalities. During the course of further investigation, he also showed willingness to produce the gupti used in the commission of offence from a place hidden by him. Therefore, at his instance, it was seized in presence of panchas by way of panchnama Ex.45. The prosecution has proved the said panchnama Ex.45 through the evidence of P.W.10, Sureshbhai Babubhai Patel at Ex.44.

23.It is required to be noted that both the prosecution witnesses 1 and 4 have categorically deposed in their evidence that they know all the accused since last 3-4 years as they are from their vicinity. It is also established from the evidence of above two witnesses that the incident has taken place at about 1700 hours in the broad day light and at the time of incident, both the eye witnesses and one Gulshan were sitting along with the deceased. Therefore, there is no question of misidentification of the accused. Moreover, looking to the way in

which the incident has taken place also, no question of misidentification of the assailants would arise. The said aspect has not even been disputed by the learned counsel for the appellants also. It is also noted that names of all the four witnesses have been given by P.W.1, complainant in his complaint Ex.59 at the earliest opportunity with their respective roles. In view of the above, it cannot be said that the complaint is concocted or got up and has been filed to falsely implicate the appellants. The complainant has identified all the accused in the Court. He has also identified all the muddamal weapons in the Court.

24.It is required to be noted that presence of the complainant at the time of incident is established from the oral evidence of the complainant as well as the complaint which has been given by him in the hospital at the earliest to 2nd P.I. of Bapunagar Police Station, Mr.Manilal Shivabhai Patel. The said complaint is corroborated by the testimony of P.W.11, Manilal Shivabhai Patel, Ex.46. The complaint is further supported by the testimony of P.W.4, Rajubhai Kishanbhai Gajjar at Ex.31. Merely because his clothes have not been seized or the autorickshaw in which the deceased was taken to Shardaben Hospital has not been attached by the I.O.,

the evidence of both the eye witnesses i.e. P.Ws.1 and 4 cannot be discarded especially when it is otherwise established beyond reasonable doubt by the prosecution after scrutinizing their evidence in its entirety. Nothing contrary has come out from their evidence also so as to shake their evidence.

25.It is clear from the aforesaid that the presence of P.W.1, Sushilkumar Bansilal Goswami and P.W.4, Rajubhai Kishanbhai Gajjar and others at the time of incident has been proved by the prosecution beyond reasonable doubt and, therefore, it is very difficult to accept the arguments advanced by the learned counsel for the appellants or to presume that the P.W.1 was not present at the scene of offence and he later on went to the hospital and gave complaint within half an hour of the incident.

26.As far as conduct of P.W.4, Rajubhai Kishanbhai Gajjar is concerned, it appears from the evidence that he left the scene of offence immediately after witnessing the incident and went home and did not come out at the place till 8 'O clock at night. Keeping only this aspect in mind, his whole evidence cannot be discarded especially when his presence has been established from the complaint, evidence of complainant and also from other evidence.

27.Thus, the prosecution is able to prove the case against the appellants beyond reasonable doubt through the evidence of above referred two witnesses. Since their evidence are trustworthy, reliable and free from doubts, they can be taken as the true version of the incident and conviction can be based on the same. However, their evidence is further supported by the FIR which is registered at the earliest. Even motive in the commission has also been proved by the prosecution.

28.It is required to be noted that in this case, victim has received 21 external injuries and three internal injuries corresponding to the external injuries. All these 21 injuries have been proved by the prosecution by leading the oral evidence of P.W.7, Dr.Chandrakant Babalal Darji, who conducted post mortem on the dead body of the deceased vide report Ex.36.

29.As per the deposition of Dr.Chandrakant Babalal Darji, he received the dead body of the deceased along with marnotar form, inquest panchnama and yadi from Police Constable having buckle No.6047 of Bapunagar Police Station on 27-6-1997 at 8.00 a.m. and completed the post mortem at 9.00 a.m. He has deposed that clothes worn by the deceased were having the blood stains. He has also deposed that injury Nos.1, 2, 6, 8, 9, 12,

13, 14, 15, 16, 17, 18, 19 and 21 are possible by way of sharp cutting instruments like Rampuri knife, sword and gupti. He has also verified the muddamal articles No.4, 12 and 1 and has categorically deposed that above referred injuries could be possible by way of these muddamal articles. He has further deposed that injury Nos.3, 10 and 11 are possible by way of hard and blunt substance. After verifying the muddamal article No.5 iron pipe, he has categorically deposed that these injuries are possible by way of muddamal article iron pipe. It is further deposed by him that injury Nos.1, 2, 9 and 12 are on vital parts of the body of the deceased and all those four injuries are independently sufficient to cause death of the deceased in the ordinary course. He has also identified the clothes which he handed over to the Police Constable and categorically deposed on seeing the cut marks on parcel I,J,K that same are possible by way of muddamal weapons. He has also deposed that all the injuries found on the body of the deceased are ante-mortem. He has also proved post mortem note Ex.37. Cause of death has been categorically stated by him to be “death due to shock due to hemorrhage due to injury sustained”.

30.From the above, the prosecution is able to

prove that death of the deceased was homicidal and the prosecution is also able to connect the accused with the said crime in question from all the evidence hereinabove referred to.

31.In view of the aforesaid discussion, we are of the considered opinion that the prosecution is able to prove the guilt against the appellants beyond reasonable doubt. Therefore, the impugned judgment and order of conviction and sentence as recorded by the court below being just, legal and proper are not required to be interfered with.

32.It is required to be noted that all the appellants are in jail. They jointly preferred Criminal Appeal No.201 of 1999 through learned counsel, Ms.Shilpa R.Shah. Prior to preferring of said appeal, appellant No.3-original accused No.3-P.K.Balam of Sessions Case No.247 of 1997 had sent an application through jail authorities and it has been treated as Criminal Appeal No.187 of 1999. However, subsequently as he along with other accused has preferred Criminal Appeal No.201 of 1999 through learned counsel, Criminal Appeal No.187 of 1999 which he had sent through jail authorities may not survive and, therefore, no separate order is required to be passed in said appeal and it is

required to be disposed of accordingly. We therefore pass the following final order:

Thus, Criminal Appeal No.201 of 1999, which has been filed by the appellant Nos.1,2 and 3-original accused Nos.1 to 3 namely, Ramchandra Singasan Yadav, Chandrashekhar and P.K.Balam respectively of Sessions Case No.247 of 1997 and appellant No.4-original accused-Chandrabhusan of Sessions Case No.118 of 1998, is dismissed.

In view of the dismissal of Criminal Appeal No.201 of 1999, Criminal Appeal No.187 of 1999, which has been filed by the original accused No.3-P.K.Balam of Sessions Case No.247 of 1997 through jail authorities does not survive and is disposed of accordingly.

33. Office shall place a copy of this judgment in each appeal.

(R.P.DHOLAKIA,J.)

(K.S.JHAVERI,J.)

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